

RESOLUTION NO. 2008-13

**A DECLARATORY RESOLUTION RATIFYING
AND APPROVING DESIGNATION
OF AN ECONOMIC REVITALIZATION AREA
FOR TAX ABATEMENT**

SCHILLI FAMILY, LLC AND SCHILLI DISTRIBUTION SERVICES, INC.

WHEREAS, IC 6-1.1-12.1 allows for a partial abatement of property taxes attributable to the redevelopment of real property and/or installation of new personal property in an “Economic Revitalization Area;” and

WHEREAS, IC 6-1.1-12.1 empowers the Common Council to designate Economic Revitalization Areas; and

WHEREAS, the Common Council of the City of Lafayette, Indiana, has designated the Lafayette Redevelopment Commission as the agency to make preliminary investigations, determinations, and recommendations to the Common Council as to what areas should be designated Economic Revitalization Areas; and

WHEREAS, Schilli Family, LLC and Schilli Distribution Services, Inc., have requested, on August 8, 2008, that real estate named in the attachments to this resolution, which attachments are incorporated herein by reference, be designated as an Economic Revitalization Area for the purpose of achieving real and/or personal property tax savings; specifically the redevelopment of the subject real estate by Schilli Family, LLC, which request has been accompanied by a Statement of Benefits and other information set forth in said attachments, and the installation of new logistical distribution equipment by Schilli Distribution Services, Inc., which request has been accompanied by a Statement of Benefits and other information set forth in said attachments; and

WHEREAS, the Lafayette Redevelopment Commission, on August 28, 2008, by **RESOLUTION LRC-2008-26**, recommended that the area be designated as an Economic Revitalization Area for tax abatement purposes, recommended approval of a deduction for tax abatement in the Economic Revitalization Area, and recommended a memorandum of agreement be entered into between each applicant and the City of Lafayette.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE that:

1. The Common Council finds that:
 - A. the subject real estate complies with the statutory criteria for an Economic Revitalization Area; and
 - B. the estimate of the values of the redevelopment and new logistical distribution equipment are reasonable for projects of this nature; and

- C. the estimate of the number of individuals who will be employed or whose employment will be retained can be reasonably expected to result from the redevelopment and installation of the new logistical distribution equipment; and
 - D. the estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the redevelopment and installation of the new logistical distribution equipment; and
 - E. the tax base of the City of Lafayette and all relevant taxing districts can be reasonably expected to increase from the redevelopment and installation of the new logistical distribution equipment; and
 - F. the totality of benefits is sufficient to justify the deduction.
- 2. The Common Council designates, finds, and establishes the subject real estate as an Economic Revitalization Area, subject to final confirmation after a public hearing.
 - 3. The Economic Revitalization Area designation terminates ten (10) years after January 1, 2008.
 - 4. Schilli Family, LLC is entitled to the opportunity to apply for a property tax deduction for an increase in assessed value resulting from the redevelopment of real estate for a period limited to ten (10) years. Schilli Distribution Services, Inc. is entitled to the opportunity to apply for a property tax deduction for an increase in assessed value resulting from the installation of new logistical distribution equipment for a period limited to six (6) years. This is subject to final confirmation after a public hearing.
 - 5. The Statement of Benefits filed on August 8, 2008 is hereby approved, subject to final confirmation after a public hearing.
 - 6. A memorandum of agreement between the City and Schilli Family, LLC and a memorandum of agreement between the City and Schilli Distribution Services, Inc. shall be entered into under the terms and conditions as reached between each applicant and the City of Lafayette for a period during the term of the tax abatement and for a period of two years thereafter, subject to final confirmation after a public hearing.

This Resolution shall be in full force and effect from and after its passage and signing by the Mayor.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE, INDIANA, on the 8th day of September, 2008.

COMMON COUNCIL OF THE
CITY OF LAFAYETTE, INDIANA

Ronald Campbell ss
Ronald Campbell, President

ATTEST:

Cindy Murray ss
Cindy Murray, City Clerk

Presented by me to the Mayor of the City of Lafayette this 8th day of September, 2008.

Cindy Murray ss
Cindy Murray, City Clerk

Signed and approved by me, the Mayor of the City of Lafayette, Indiana, this 8th day of September, 2008.

Tony Roswarski ss
Tony Roswarski, Mayor

ATTEST:

Cindy Murray ss
Cindy Murray, City Clerk

Sponsored by Tony Roswarski, Mayor

CITY OF LAFAYETTE, INDIANA

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Agreement”) is dated this 8th day of September, 2008, and serves as the confirmation of the commitment by **Schilli Distribution Services, Inc.** (the “Applicant”), pending a public hearing scheduled for October 6, 2008, to comply with the project description and job creation and retention (and associated wage rates and salaries) figures contained in its designation application, Statement of Benefits, Resolution No. LRC-2008-26, a resolution of the Lafayette Redevelopment Commission (“Commission”) recommending the designation of an Economic Revitalization Area for the purpose of tax abatement commencing January 1, 2008 and concluding December 31, 2018, Declaratory Resolution No. 2008-13 adopted by the Lafayette Common Council (“Council”) and Confirming Resolution No. _____ adopted by the Council and this Agreement (“Commitments”).

Section 1. Grant of Abatement.

Subject to the adoption of the deduction approval Resolution by the Council, the City of Lafayette, Indiana (“City”) commits to providing a six (6) year personal property tax abatement for the Applicant’s capital expenditures of approximately One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) associated with the installation of new logistical distribution equipment (“Project”) approved as part of the Commitments. The project will retain 32 permanent positions and create 12 permanent positions (average total wage rate of \$14.50 per hour warehouse, \$16.00 per hour administrative, and \$21.00 per hour management, excluding benefits and overtime). The capital expenditures for the Project shall occur no later than the estimated completion date of December 31, 2009 as contained in the Statement of Benefits Form (“Commitment Date”).

Section 2. Annual Information.

During the term of the tax abatement and for a period of two (2) years thereafter, the City or its authorized agent may annually request information from the Applicant concerning the nature of the Project and the approved capital expenditures for the Project and the Applicant shall provide the City with adequate written evidence thereof within 15 days of such request

("Annual Survey"). The City shall utilize this information and the information required to be filed by the Applicant in the CF-1 Compliance with the Statement of Benefits form to verify that the Applicant has complied with the commitments contained in the Commitments at all times after the Commitment Date and during the duration of the tax abatement. The applicant further agrees to provide the City with such additional information requested by the City related to the information provided in the Annual Survey and the CF-1 form within a reasonable time following any such request.

The applicant further agrees that it shall be current on all federal, state and local tax obligations and failure to do so may be considered an act of noncompliance. Each annual compliance statement shall included a verified statement attesting that the entity is current with all outstanding federal, state, and local tax obligations.

Section 3. Termination.

A. Right to Terminate. The city, by and through the Council, after recommendation by the Commission, reserves the right to terminate the personal property tax abatement deductions if it determines that the Applicant has not made reasonable efforts to substantially comply with all of the Commitments and the Applicant's failure to substantially comply with the Commitments was not due to factors beyond its control.

B. Factors Beyond Control. As used in this Agreement, factors beyond the control of the Applicant shall only include factors not reasonably foreseeable at the time of the designation application and submission of Statement of Benefits which are not caused by any act or omission of the Applicant and which materially and adversely affect the ability of the Applicant to substantially comply with the Agreement. New technological developments and process improvements may also be included as factors beyond of the control of the applicant.

C. Repayment Upon Termination. The City, by and through the Council, after recommendation by the Commission, may terminate the tax abatement deductions and if the new logistical distribution equipment is removed from the City of Lafayette, the City may

require the Applicant to repay all of the personal property tax abatement savings received through the date of such termination; pursuant to Resolution 2004-22 of the City of Lafayette; provided however that the logistical distribution equipment may be removed by the Applicant for the purpose of a model change, technological or process improvement, or if the equipment is replaced with comparable equipment.

D. Notice of Termination and Repayment. In the event that the City determines that the tax abatement deductions should be terminated or that all of the tax abatement savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City's designated representatives to show cause why the abatement should not be terminated and/or the tax benefits repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the abatement termination and/or tax benefits repayment should not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the abatement termination and/or tax benefits repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Council before any final action shall be taken terminating the abatement and/or requiring repayment of tax benefits. If the Council adopts a resolution terminating the tax abatement and/or requiring repayment of tax benefits, the Applicant shall be entitled to appeal that determination to a Tippecanoe County Superior or Circuit Court.

E. Time of Repayment. In the event that the City requires repayment of the tax abatement benefits as provided hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall make such repayment to the City within thirty (30) days of the date of delivery of the Statement, unless such repayment has been stayed pending an appeal. If the Applicant does not make timely repayment, the City shall be entitled to all reasonable costs and attorneys fees incurred in the enforcement and collection of the tax abatement savings required to be repaid hereunder.

Section 4. Use of Local Suppliers and Contractors for Project and Local Persons to Fill Positions Created by Project.

The Applicant agrees to make a meaningful, good-faith effort to use local suppliers, local contractors and/or prevailing wage contractors for the Project.

Local suppliers and local contractors are defined as contractors and suppliers that are primarily engaged, reside in or have their principal office in Tippecanoe County or employ a significant number of residents of the City of Lafayette.

Prevailing wage contractors are defined as contractors that pay wages equal to or greater than the prevailing wages set by the City of Lafayette Common Construction Wage Panel at its most recent wage meeting.

Additionally, applicant agrees to make a meaningful, good-faith effort to hire qualified individuals who are residents of the City of Lafayette for the new positions that will be created by the Project.

Section 5. General Provisions.

A. This Agreement contains the entire understanding between the City and the Applicant with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements, and conditions, express or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the City and Applicant. The Applicant understands that any and all filings required to be made or actions required to be taken to initiate or maintain the tax abatement are solely the responsibility of the Applicant.

B. Neither the failure nor any delay on the part of the City to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power or privilege with

respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

C. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana, without regard to conflict of law principles.

D. The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Tippecanoe County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action relating to this Agreement or any documents or instruments delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

E. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand or by facsimile (with confirmation by registered or certified mail) or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant: Schilli Distribution Services, Inc.
1560 Kepner Dr.
Lafayette, IN 47905
Attn: G. D. Gulliford, Sr.

If to City: City of Lafayette, Indiana
20 N. 6th Street
Lafayette, Indiana 47901
Attn: Director of Redevelopment

F. This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

G. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. By executing this Agreement, each person so executing affirms that he or she has been duly authorized to execute this Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of such party.

H. The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provisions shall be effected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

I. No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

J. The Parties hereto agree to treat, and to cause their respective directors, officers, employees and agents to treat, as strictly confidential to the fullest extent permitted by law (including the Federal Freedom of Information Act, and any counterpart Indiana statutes), the contents of this Agreement and all attachments hereto, all documents executed in connection herewith and all information provided by or to the Parties in connection herewith.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Applicant

City

Schilli Distribution Services, Inc.

City of Lafayette, Indiana

By: George Benda ss

By: Ronald B. Campbell ss
President, Common Council

Printed: George D. Benda ss

Attest: Cindy Murray ss
Cindy Murray, City Clerk

Title: Vice President ss

CITY OF LAFAYETTE, INDIANA
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Additionally, applicant agrees to make a meaningful, good-faith effort to hire qualified individuals who are residents of the City of Lafayette for the new positions that will be created by the Project.

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B. Neither the failure nor any delay on the part of the City to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

C. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana, without regard to conflict of law principles.

D. The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Tippecanoe County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action relating to this Agreement or any documents or instruments delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

E. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand or by facsimile (with confirmation by registered or certified mail) or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant: Schilli Family, LLC
d/b/a Schilli Distribution Services, Inc.
6359 US Highway 24 W
Remington, IN 47977
Attn: G. D. Gulliford, Sr.

If to City: City of Lafayette, Indiana
20 N. 6th Street
Lafayette, Indiana 47901
Attn: Director of Redevelopment

F. This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

G. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. By executing this Agreement, each person so executing affirms that he or she has been duly authorized to execute this Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of such party.

H. The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provisions shall be effected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

I. No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

J. The Parties hereto agree to treat, and to cause their respective directors, officers, employees and agents to treat, as strictly confidential to the fullest extent permitted by law (including the Federal Freedom of Information Act, and any counterpart Indiana statutes), the contents of this Agreement and all attachments hereto, all documents executed in connection herewith and all information provided by or to the Parties in connection herewith.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Applicants

City

Schilli Family, LLC
d/b/a Schilli Distribution Services, Inc.

City of Lafayette, Indiana

By: G.D. Gulliford, Sr. ss

By: Ronald B. Campbell ss
President, Common Council

Printed: G.D. Gulliford, Sr. ss

Attest: Cindy Murray ss
Cindy Murray, City Clerk

Title: Tax & Special Projects Manager